UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30365

MAR 0 2 1989

YELLOW

4-RC

SPECIAL NOTICE LETTER FOR RI/FS
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Russell V. Randle
Counsel to Carrier Corporation
Patton, Boggs & Blow
2550 M. Street, N.W.
Washington, D.C. 20037-1350

Re: Carrier Air Conditioning
Collierville, Tennessee

Dear Mr. Randle:

This letter follows notice letters that have been issued to Carrier Corporation (hereinafter sometimes referred to as "you") and other parties in connection with the above-referenced Site. This letter serves two functions. First, it responds to Carrier's proposal that the Collierville site be remediated under statutory authority other than the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"). Second, this letter notifies you that a 60-day period of formal negotiations with the Environmental Protection Agency ("EPA" or "Agency") automatically begins with this letter.

CERCLA is the appropriate authority for remediation of this Site

In your meeting on January 13, 1989, with EPA staff, and in your follow-up letter to the Agency, Carrier has proposed that releases at the Site be addressed under some other authority than CERCLA. Specifically, you propose that a consent order be entered under § 3008(a) of the Resource Conservation and Recovery Act (RCRA) or under § 1423(c) of the Safe Drinking Water Act (SDWA). These alternatives are proposed based on Carrier's belief that they would result in faster cleanup and faster reduction of any public health risk than CERCLA procedures. For the reasons set out below, the Agency has decided that CERCLA is the appropriate authority to address this Site.

The company first proposes that releases at the Collierville facility be addressed under RCRA corrective action. However, while Carrier did file an application for transport, storage or disposal status, the company withdrew that application on January 4, 1982. At the time the application was withdrawn, Carrier told the Agency that the application had been a protective filing only and that the facility never operated as a treatment, storage or disposal facility. Events occurring after the company voluntarily withdrew its permit application resulting in the termination of interim status, which may otherwise have been violation of that interim status, do not form a basis for deferring to RCRA corrective action in this case.

Carrier also has proposed that a consent order be entered under SDWA. The State of Tennessee has primary responsibility for enforcement of SDWA. 42 U.S.C. § 300g-2. The Agency may take enforcement action under the Act only after a lengthy procedure allowing the State the opportunity to properly enforce the Act. 42 U.S.C. 300g-3. SDWA does not provide a reasonable alternative to CERCLA in this case.

Finally, RCRA and SDWA do not provide for public participation as required under CERCLA. Certainly the Agency's primary concern is the cleanup of the Collierville site. Since the Site has been proposed to the NPL, with public notice of that proposal, the Agency also has a responsibility to ensure public notice and an opportunity for public participation in that cleanup. This Agency responsibility is much more than a bureaucratic concern favoring CERCLA.

The Agency does not believe addressing this Site under CERCLA authority will result in a delayed cleanup, as the company asserts. Of course, if Carrier undertakes to perform activities at the Site, the company will control much of the pace of the work. The Agency, however, will provide oversight as quickly as Carrier provides the work. EPA has indicated that data from investigations already performed by the Company may be used in the CERCLA response. How that existing data could fit into the RI/FS would be set out in the work plan submitted to the Agency by the company. Depending on how the data would be used, and subject to the analysis used to generate the data being approved by the the Agency, EPA would have no objection to such data being used. Finally, all information currently available on the Collierville site indicates the remedial action necessary to correct the TCE contamination will be fairly straightforward.

For the reasons set out above, EPA will proceed with remediation action at the Collierville site pursuant to CERCLA authority. Of course, EPA would like to work with Carrier at this Site in any way which does not interfere with the Agency's responsibilities under CERCLA. EPA will not agree to remove this Site from the proposed NPL. The Agency would consider deferring listing of the Site on the final NPL, however, if proposed changes to the National Contingency Plan are finalized which would allow such a deferral. Deferral from final listing would be based on an agreement by the company to perform the remedial investigation and feasability study (RI/FS). The proposed listing could then be dropped if the company subsequently agreed to perform the remedial action selected in the Agency's record of decision. As the proposal to the NCP indicates, such deferral would be subject to an enforceable consent decree being entered both for the RI/FS and the remedial action.

Notice of potential liability

As indicated in the general notice letter previously sent regarding this Site, EPA has information indicating that Carrier Corporation may be a PRP as defined at Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to this Site. With this letter, EPA encourages you to voluntarily negotiate a consent decree in which you agree to perform or finance the RI/FS for the Site.

Carrier is notified by this letter that EPA anticipates expending funds for the RI/FS. Whether EPA funds the entire RI/FS, or simply incurs costs by overseeing your conducting these cleanup activities, you are potentially liable for these costs.

Special notice and negotiations moratorium

EPA has determined that use of the Section 122(e) special notice procedures will facilitate a settlement between EPA and Carrier. This letter triggers a 30-day moratorium on certain EPA response activities at the Site. During this 30-day period, you are invited to participate in formal negotiations with EPA. The 30-day negotiation moratorium will be extended for an additional 60 days if you provide EPA with a good faith offer to conduct or finance the RI/FS. Should a 90-day negotiation moratorium take place, negotiations will conclude on June 2, 1989. If settlement is reached between you and EPA within the 90-day negotiation moratorium, the settlement will be embodied in an administrative order for the RI/FS. The 90-day period is the maximum, not minimum, time Carrier will be allowed to negotiate with EPA on the RI/FS at this Site.

Work plan and draft consent decree

A copy of EPA's RI/FS Guidance, and another copy of the draft consent decree earlier sent to Carrier, are enclosed. These are provided to assist you in developing a good faith offer for conducting the RI/FS. In this connection you must bear in mind that this consent decree is merely a draft which we think may be useful as a starting point for future negotiations.

Good faith offer

As indicated, the 30-day negotiation moratorium triggered by this letter is extended for 60 days if you submit a good faith offer to EPA. A good faith offer to conduct or finance the RI/FS is a written proposal that demonstrates your qualifications and willingness to conduct or finance the implementation of the RI/FS, and includes the following elements:

1. A statement of willingness by Carrier to conduct or finance the RI/FS which is consistent with EPA's RI/FS Guidance and draft consent decree and provides a sufficient basis for further negotiations;

2. A response to EPA's draft consent decree;

3. A detailed work plan identifying how Carrier plans to proceed with the work outlined in the RI/FS Guidance;

4. A demonstration of Carrier's technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process you will use to select the firm(s);

5. A demonstration of Carrier's capability to finance the RI/FS;

6. A statement of willingness by Carrier to reimburse EPA for past response costs and costs incurred in overseeing your conduct of the RI/FS;

7. The name, address, and phone number of the party who will represent Carrier in negotiations; and

8. A description of Carrier's position on releases from liability and reopeners to liability.

Administrative record

Pursuant to CERCLA Section 113(k), EPA will establish an administrative record file that will contain documents that form the basis for EPA's decision on the selection of a response action for the Site. This administrative record will be open to the public for inspection and comment.

PRP response and EPA contact person

You have thirty (30) calendar days from this notice to notify EPA in writing of your willingness to negotiate the performance or financing of the RI/FS. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. You may be held liable by EPA under Section 107 of CERCLA for the cost of the cleanup activities EPA performs at the Site.

Your response to this notice letter should be sent to:

Ms. Felicia Barnett
Remedial Project Manager
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-7791

If you have any technical questions pertaining to this matter, please direct them to Ms. Barnett at the address or number shown above. If you have any legal questions pertaining to this matter, please direct them to Ms. Carol F. Baschon, Assistant Regional Counsel, at (404) 347-2641 or at the address shown above.

Sincerely yours,

Patrick M. Tobin
Director
Waste Management Division

Enclosures